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## TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

*Protecting Texas by Reducing and Preventing Pollution*

February 16, 2012

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CERTIFIED MAIL

Mr. William Honker  
Acting Director  
Water Quality Protection Division  
United States Environmental Protection Agency  
Region 6 (6WQ)  
1445 Ross Avenue  
Dallas, Texas 75202-2733

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Re: UIC Program Revision to Establish an Aquifer Exemption  
Fusselman Formation, Montoya Group, and El Paso Group, El Paso County

Dear Mr. Honker:

On December 15, 2011, the Texas Commission on Environmental Quality (TCEQ) issued an order designating a portion of the Fusselman Formation, Montoya Group, and El Paso Group (hereinafter referred to as the Fusselman, Montoya, and El Paso group) as an exempt aquifer under TCEQ rule 30 Tex. Admin. Code §331.13. The designation of the exempt aquifer was made at the request of El Paso Water Utilities (EPWU) in conjunction with the operation of the Kay Bailey Hutchinson Desalination Plant and EPWU's use of Class V injection wells in El Paso County, Texas. EPWU states that the desalination plant is a vital part of the El Paso region's drought-prone water supply and that the aquifer exemption will allow the conservation of drinking water resources. Copies of the application and aquifer exemption order are attached.

The TCEQ's consideration of the designation of this exempt aquifer was subject to mailed and newspaper published notice, a public meeting held in El Paso County, and a public comment period. A formal response was issued addressing the comments submitted during the comment period. The TCEQ's approval of the designation of the exempt aquifer is consistent with the state's authorized underground injection control program rule in 30 Tex. Admin. Code §331.13, the Environmental Protection Agency's (EPA's) criteria for exempted aquifers in 40 CFR §146.4, and EPA's *Guidance for Review and Approval of State Underground Injection Control (UIC) Programs and Revisions to Approved State Programs*, GWPB Guidance #34.

In accordance with 40 CFR §§ 144.7, 145.32, and 146.4, the TCEQ requests EPA's approval of the revision of TCEQ's Underground Injection Control Program to reflect the designation of this exempted aquifer. The 115 square mile aquifer exemption area is described in TCEQ's aquifer exemption order and discussed in the enclosed application. The part of the aquifer to be exempted includes the Fusselman, Montoya, and El Paso group. The total dissolved solids (TDS) concentration of water sampled from the Fusselman, Montoya, and El Paso group in the exempted aquifer is greater than 8,000 milligrams per liter (mg/l). The exempted portion of

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these formations is not currently used as a source of drinking water. The exempted portion of these formations will not in the future serve a source for drinking water because it is situated at a depth and location which makes recovery of water for drinking water purposes economically or technologically impractical. Because the total dissolved solids content of the ground water is more than 3,000 and less than 10,000 mg/l and the ground water is not reasonably expected to supply a public water system, the designation of the exempt aquifer becomes final if the Administrator does not disapprove the designation within 45 days of the receipt of this request under 40 CFR § 144.7(b)(3)(ii).

In accordance with Section II (relating to Program Revisions) of EPA's *Guidance for Review and Approval of State Underground Injection Control (UIC) Programs and Revisions to Approved State Programs*, GWPB Guidance #34, this program revision is not considered a substantial program revision. The exempted aquifer contains water of greater than 3,000 mg/l TDS; the exempted aquifer is not related to a Class I injection well; and the exempted aquifer is related to a specific injection well authorization. To assist in the review of the aquifer exemption, I am enclosing the following information organized according to Guidance 34 criteria, including: the TCEQ order and map of the exempted area, a written description of the exempted aquifer, the demonstration that the exempted aquifer does not currently serve as a source of drinking water, and the demonstration that the exempted aquifer will not in the future serve as a source of drinking water because it is situated at a depth or location which makes recovery of water for drinking water purposes economically or technologically impractical.

The TCEQ would appreciate EPA's prompt approval of this non-substantial program revision in accordance with 40 CFR §§ 144.7, 145.31 and 145.32. Because EPWU is relying on the designation of the exempt aquifer for preservation of drinking water supplies in the El Paso area, the TCEQ may allow EPWU to operate injection wells with the exempt aquifer status if the designation is not disapproved by the Administrator within 45 days of the receipt of this request.

Should you have any questions or need additional information, please contact Mr. Bryan Smith at (512) 239-6075 or send correspondence to him at mail code MC233.

Sincerely,



Susan Jablonski, P.E., Director  
Radioactive Materials Division  
Texas Commission on Environmental Quality

SJ/BS/nlc

cc: Mr. Jose Torres, EPA Region 6, 6WQ-S

Enclosure (4)